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**FILED**

**APR 25 1984**

**ALEXANDER L. STEVAS,**

**CLERK**

**No. 83-1000**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**OCTOBER TERM, 1983**

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**J. D. COURT, INC., a Corporation,**

**Petitioner,**

**vs.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**PETITIONER'S REPLY  
TO MEMORANDUM IN OPPOSITION**

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**SCHNEPP & BARNES PRINTERS, INC., SPRINGFIELD, ILL.**

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The chief thrust of Respondent's Memorandum in Opposition is an attempt to shift the Court's attention from the Petitioner's arguments on the application of the doctrine of choateness and the plain words of Subsection (a) of Section 6323 to Subsection (c) of that Section. (26 U.S.C., Section 6323) Any straightforward application of Subsection (c), if it applies at all, must result in a decision for the Petitioner.

First of all, Subsection (c) by its own terms applies to security interests "... which came into existence *after* the tax lien filing . . . ." (Emphasis added) The security interest in question came into existence four months *before* the first tax lien filing. As-

suming, *arguendo*, application of Subsection (c) and an extension of the additional protections afforded lenders thereunder, the Petitioner must prevail under the Respondent's own regulations. The parties stipulated in the trial court that:

The funds in question were payable to the taxpayer by the Department of Public Aid, pursuant to a written agreement effective during the period of time prior to May 10, 1979 through February 14, 1980. (Common Law Record, *Agreed Statement of Undisputed Facts*, Item 13, pp. 1-2.)

The Respondent promulgated regulations which support the Petitioner's position; Regulation 301.6323(c)-1, promulgated under Section 6323(c) and defining "qualified property" expressly provides:

*A contract right (as defined in Paragraph (c)(2)(i) of this Section) is acquired by a taxpayer when the contract is made. (Emphasis added)*

Local law does not distinguish between contract rights and accounts. The Illinois Commercial Code of Illinois, as amended in 1972, eliminated the distinction and provides that "contract rights" are included in the definition of "accounts." See Illinois Code Comments to Section 9-106, Ch. 26, Smith-Hurd Annotated Illinois Statutes, Section 9-106.

While the term of art under local law to secure contract rights is "accounts," the Respondent seeks to bootstrap its arguments by reference to Treasury Regulations referring to "accounts." These are issues not developed in the lower courts. It is clear that state law determines the nature and extent of "property" and "rights to property." *Acquillino v. United States*, 363 U.S. 509 (1960) (cited in Petition).

The existence of an underlying contract by the Treasury's own Regulations relates the existence of the security agreement back to the date of the contract, and in this case, to a date prior to the first tax lien filing, and therefore brings the security interest under Subsection (a), (i.e., Petitioner is holder of a

security interest at time of filing of the tax lien), and not Subsection (c), where a security interest "came into existence *after* tax lien filing."

While the Respondent seems to acknowledge that the doctrine of choateness should give way to the plain terms of the Federal Tax Lien Act, it urges that the courts should apply the Treasury's Regulations and definitions to recast state law concepts and rights in a federal mold and in effect make the doctrine statutory. Petitioner respectfully suggests that commercial expectations, coupled with the congressional deference afforded private liens under the Tax Lien Act, mandate a rejection of not only the doctrine but of any requirement of "performance" in fact or "earned by performance" prior to the 46th day after a Federal Tax Lien filing. By such time, the private lender has already parted with value, and under the Respondent's argument, essentially would result in payment of tax liens by innocent third parties. Subsection (c) of Section 6323 is for the protection of lenders or creditors who part with value *after* the tax lien filing, either innocently or by virtue of a contractual obligation to do so.

Respectfully submitted,

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PETITION FOR REHEARING AND MOTION  
FOR LEAVE TO FILE REPLY TO RESPONDENT'S  
MEMORANDUM IN OPPOSITION INSTANTER

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Petitioner, J. D. COURT, INC., petitions this Honorable Court for a rehearing from the Order denying the Petition for Writ of Certiorari, and further moves this Court for leave to file Petitioner's Reply to Memorandum in Opposition Instanter, and in support thereof, says and shows unto the Court as follows:

1. That Respondent's Memorandum in Opposition was received on March 18, 1984.
2. That Petitioner's Reply was printed and served, together with Proof of Service, on March 30, 1984.

3. That by letter dated April 2, 1984, from the Clerk of this Court, the Clerk returned the Reply, explaining that the same was received too late for consideration by the Court in that the Petition was denied on April 2, 1984.

4. That on April 7, 1984, Petitioner received the Order of the Court denying the Petition for Writ of Certiorari.

5. That Petitioner tenders herewith the Reply to Memorandum in Opposition previously served on the Respondent on March 30, 1984, and sent for filing on March 30, 1984.

6. That in support of the Petition for Rehearing, Petitioner incorporates herein by reference all matters and things set forth in the Reply tendered to the Court with this Petition for Rehearing and Motion for Leave.

WHEREFORE, Petitioner prays as follows:

(A) That the Court grant the Motion for Leave to File the Reply to Memorandum in Opposition Instanter;

(B) That the Court rehear Petitioner's Petition for Writ of Certiorari, including a consideration of matters and things set forth in the accompanying Reply;

(C) That the Court allow the Petition and enter an appropriate Order thereon.

Respectfully submitted,

J. D. COURT, INC., Petitioner

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